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May 22, 2012

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**VIA HAND DELIVERY**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

FILED/ACCEPTED

MAY 22 2012  
Federal Communications Commission  
Office of the Secretary

**Re: For Public Inspection**  
**Adak Eagle Enterprise, LLC - For Public Inspection Version of Petition for Waiver in**  
**WC Docket Nos. 10-90, 07-135, 05-337 and 03-109; CC Docket Nos. 01-92 and 96-45;**  
**WT Docket No. 10-208; GN Docket No. 09-51**

Dear Ms. Dortch:

On behalf of Adak Eagle Enterprises, LLC (“AEE”) and in accordance with the Protective Order adopted in the above referenced proceedings, please find enclosed two copies of AEE’s Public Inspection version in redacted form of its updated Petition for Waiver filed in the aforementioned dockets. The [[ ]] symbols in the Public version of the Petition for Waiver denote redacted Confidential Information. A Confidential version of the Petition for Waiver is being filed separately with the Secretary’s Office and the Wireline Competition Bureau.

AEE is re-submitting both the Confidential and Public Inspection versions of its Petition to modify language explaining how AEE will be impacted by the phased-in implementation of the new cap on High Cost Loop Support (“HCLS”) for rate-of-return carriers adopted in the Commission’s *USF/ICC Transformation Order*.<sup>1</sup> AEE also supplements its Petition with the following updated exhibits:

- Attachment B: Added to include the Adak Telephone Utility Story as told by Larry Mayes, Founder, President and CEO of AEE.

<sup>1</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) (“*USF/ICC Transformation Order*”).

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JUL 25 2012



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- Exhibit 8: Updated to include additional financial information showing the impact of the phased-in HCLS cap on AEE, including its annual loss, and an explanation of its audited consolidated financial statements.
- Exhibit 9: Updated to include additional information relating to AEE's outstanding Rural Utilities Service ("RUS") loan obligations.

Should you have any questions concerning the foregoing request, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Richter", written over a circular stamp or seal.

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*Counsel for Adak Eagle Enterprises, LLC*

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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|   |   |                      |
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| In the Matter of  | ) |                      |
|   | ) |                      |
| Connect America Fund  | ) | WC Docket No. 10-90  |
|   | ) |                      |
| A National Broadband Plan for Our Future                              | ) | GN Docket No. 09-51  |
|   | ) |                      |
| Establishing Just and Reasonable Rates for<br>Local Exchange Carriers | ) | WC Docket No. 07-135 |
|   | ) |                      |
| High-Cost Universal Service Support                                   | ) | WC Docket No. 05-337 |
|   | ) |                      |
| Developing an Unified Inter-carrier<br>Compensation Regime            | ) | CC Docket No. 01-92  |
|   | ) |                      |
| Federal-State Joint Board on Universal<br>Service                     | ) | CC Docket No. 96-45  |
|   | ) |                      |
| Lifeline and Link-Up  | ) | WC Docket No. 03-109 |
|   | ) |                      |
| Universal Service Reform – Mobility Fund                              | ) | WT Docket No. 10-208 |

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To the Wireline Competition Bureau:

**PETITION FOR WAIVER OF ADAK EAGLE ENTERPRISES, LLC**

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*Counsel to Adak Eagle Enterprises, LLC*

Dated: May 22, 2012

## EXECUTIVE SUMMARY

Adak Eagle Enterprises (“AEE”) is the only provider of wireline voice service to Adak Island, part of the Aleutian chain of islands in Alaska (the “Adak area”). The AEE infrastructure supports all broadband service and critical wireless service to the area. All of the services are newly initiated. The wireline service has been in place six years, the broadband service three years, and the wireless service just two years. Without the essential communications services provided by, and supported by, AEE, there could be no economy in the Adak area. The Alaska Congressional Delegation put it well: “[A]s you can imagine, Adak’s dependence on telecommunications is enormous,” and the potential loss of such services “presents a crisis[.]”

It is expensive to provide communications services to the Adak area. Not only is Adak remote, but it is one of the most climactically inhospitable areas in the country. It is near an active volcano and in an earthquake zone. It has frequent cyclonic storms, winter squalls producing wind gusts in excess of 100 knots, extensive fog storms in the summer, and an average accumulated snowfall of 100 inches.

Because of the high cost of providing service to the Adak area, AEE receives High Cost Loop Support (“HCLS”) today of approximately \$1,394 per line, per month. Pursuant to the Commission’s *USF/ICC Transformation Order*, this support will ultimately be slashed to \$250 per line, per month. AEE already operates at a loss and cannot afford the implementation of the \$250 cap, even through the partial phase-in beginning this July. There is no amount of cost-cutting that can bring AEE’s costs in line with the drastic revenue reduction mandated by the Commission. The alternative – making customers pay the shortfall – is unworkable. Each residential customer would ultimately have to pay approximately \$2,698 each month, over 6,000% more than the current rate, just to cover AEE’s operating expenses.

AEE does not believe the Commission intends the devastating consequences that will follow application of the HCLS cap to AEE and the Adak area. Waiver of the \$250 per line monthly cap is justified because, as the *USF/ICC Transformation Order* provides, AEE “can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice service, with no alternative terrestrial providers available to provide voice telephony.” Imposition of the HCLS cap for the Adak area will not just put wireline consumers “at risk” of losing service, it will actually cause consumers to lose wireline, wireless, roaming and broadband service, creating a new unserved area.

Good cause for the waiver also exists because, without it: (1) AEE will default on its Rural Utilities Service (“RUS”) loans, wasting millions in taxpayer dollars just years after such funding was approved; (2) the Adak community’s vital anchor institutions will lose access to essential voice and broadband services; (3) critical services, government functions and public safety will be jeopardized; and (4) AEE will become insolvent, causing jobs to be lost and the fragile Adak economy to suffer. All of these results are directly at odds with the Commission’s universal service goals, broadband goals, wireless and public safety goals, and the Administration’s goals with respect to job creation.

For all these reasons, AEE requests a waiver of the \$250 monthly cap, and AEE requests that the Wireline Competition Bureau forestall phase-in of the cap with respect to AEE until action is taken on this Petition. In order to be consistent with the delayed transition plan for remote Alaska CETCs, the Bureau would be justified in granting, at a minimum, an initial two-year delay in implementation of the \$250 HCLS cap. Going forward, the Bureau must ensure that USF funding for AEE closely replicates AEE’s current level of USF support. AEE can

periodically revalidate its need for support above the HCLS cap. Because AEE operates in such a fixed, high-cost context, any decrease in current support levels is unsustainable and untenable.

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**BEFORE THE  
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| Federal-State Joint Board on Universal<br>Service                     | ) | CC Docket No. 96-45  |
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| Lifeline and Link-Up  | ) | WC Docket No. 03-109 |
|   | ) |                      |
| Universal Service Reform – Mobility Fund                              | ) | WT Docket No. 10-208 |

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To the Wireline Competition Bureau:

**PETITION FOR WAIVER OF ADAK EAGLE ENTERPRISES, LLC**

Adak Eagle Enterprises (“AEE”) d/b/a Adak Telephone Utility (“ATU”) respectfully requests waiver of a rule impacting High Cost Loop Support (“HCLS”) that was adopted by the Commission as part of its Universal Service Fund (“USF”) and Intercarrier Compensation (“ICC”) Report and Order released on November 18, 2011 (“*USF/ICC Transformation Order*”).<sup>1</sup> Specifically, AEE requires waiver of the Commission’s implementation of the \$250 per line

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<sup>1</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011). AEE seeks a waiver pursuant to both Section 1.3 of the Commission’s Rules, and pursuant to the process set forth in the *USF/ICC Transformation Order*.

monthly cap on HCLS.<sup>2</sup> Without this waiver, communications services for the Adak community, including all wireline, broadband and critical wireless, will cease operating, and AEE will default on its Rural Utilities Service (“RUS”) loans.

AEE is the Incumbent Local Exchange Carrier (“ILEC”) and is the only carrier providing wireline service to the Adak community. AEE also provides critical interconnection and backhaul for all other communications carriers, wireless and broadband, that serve the Adak area.

It is expensive to provide communications services to the Adak area. Not only is Adak extremely remote, but it is one of the most climactically inhospitable areas in the country. It is near an active volcano and in an earthquake zone. It has frequent cyclonic storms, winter squalls producing wind gusts in excess of 100 knots, extensive fog storms in the summer, and an average accumulated snowfall of 100 inches.<sup>3</sup> The island is infested with large Norwegian rats that regularly chew through communications infrastructure, and is littered with active bombs that make trenching and digging beyond challenging and complicated.

Good cause exists for the Wireline Competition Bureau (the “Bureau”) to exempt AEE from implementation of the \$250 monthly cap and to grant AEE a waiver for the following reasons: (1) the Adak community will lose wireline and wireless voice service and roaming capabilities with no terrestrial alternative, and access to broadband will be completely eliminated; (2) AEE will be forced to default on its RUS loans, wasting millions in taxpayer dollars that supported AEE's substantial investments to rebuild and expand the communications system in Adak, only a few years after such funding was approved; (3) the Adak community's

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<sup>2</sup> See *id.*, ¶¶ 274-275, Appendix A, Section 54.302.

<sup>3</sup> See Density, Geographic Characteristics of Study Area at Exhibit 1.

vital anchor institutions will lose access to all voice and broadband services; (4) critical services, government functions and public safety will be jeopardized; and (5) AEE will become insolvent, causing jobs to be lost and the fragile Adak economy to suffer. All of these results are directly at odds with the Commission's universal service goals, broadband goals, wireless and public safety goals, and the Administration's goals with respect to job creation.

The Bureau also should grant this waiver request because implementation of the \$250 monthly cap, beginning in July of this year, as applied to AEE, violates the Commission's intention to afford carriers in Alaska, who face unique high-cost challenges, an adequate transition period "in order to avoid shocks to service providers that may result in service disruptions for consumers."<sup>4</sup> AEE already operates at a loss and cannot afford the reduction in funding scheduled to begin in a matter of weeks.<sup>5</sup> In view of the high cost of providing service to Adak, the nearly immediate application of funding reductions also contradicts one of the Commission's explicit guiding principles from the National Broadband Plan that there should be no flash cuts: "New rules should be phased in over a reasonable time period. Policymakers must give service providers and investors time to adjust to a new regulatory regime."<sup>6</sup> While the Commission adhered to this principle in other reforms adopted by the *USF/ICC Transformation Order*, particularly as it applies to Alaska, the facts presented in this Petition make clear that the

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<sup>4</sup> *USF/ICC Transformation Order*, ¶ 513.

<sup>5</sup> The audited financial statements consolidate the operations of AEE and its affiliate, Windy City Cellular. AEE operates at a loss, but Windy City Cellular formerly operated at a profit. Based upon the reforms contained in the *USF/ICC Transformation Order*, Windy City Cellular now operates at a loss and, without a requested waiver, will have to shut down service by July 1. An explanation of AEE's annual loss is attached hereto as part of the Declaration of Andilea Weaver, attached at Exhibit 8.

<sup>6</sup> Federal Communications Commission, Omnibus Broadband Initiative, Connecting America: The National Broadband Plan, GN Docket No. 09-51, 143 (2010) ("National Broadband Plan") (emphasis added).

Commission, likely inadvertently, failed to ensure comprehensive, sufficiently gradual reforms for Alaska carriers, such as AEE, serving uniquely remote areas. For the Adak area and AEE, the consequences are so catastrophic that communications services will be lost, turning a fully served area into one that will likely become unserved by the end of 2013 – a year when AEE’s losses are projected to be over \$1.7 million.<sup>7</sup>

When devising the \$250 monthly cap, the Commission specifically based the calculation on its observation that 99 percent of incumbent LEC study areas already receive support under \$250 per line per month.<sup>8</sup> However, due to the extraordinarily high, fixed-costs of providing service in Alaska, including the Adak area, AEE receives support of approximately \$1,394 per line monthly, \$1,144 over the \$250 cap. Even a phase-in of this cap will have an immediate “disproportionate or inequitable impact” on AEE,<sup>9</sup> resulting in a confiscatory taking in violation of the Fifth Amendment and contravening principles of fairness and due process in violation of the Administrative Procedure Act (“APA”).<sup>10</sup>

However, to the Commission’s credit, it understood that the national framework created by the *USF/ICC Transformation Order* could be ill-suited to fit individual circumstances, particularly for carriers serving Alaska. It therefore wisely provided for an expedited waiver mechanism to deal with such cases on an accelerated timeframe.<sup>11</sup> AEE respectfully requests such expeditious decision-making in this case. Without relief from implementation of the \$250

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<sup>7</sup> See Adak Telephone Utility, Financial and Operating Forecast 2011-2016 (“Financial and Operating Forecast”) at Exhibit 8.

<sup>8</sup> See *USF/ICC Transformation Order*, ¶ 277.

<sup>9</sup> *Id.*, ¶ 508.

<sup>10</sup> 5 U.S.C. § 551, et seq.

<sup>11</sup> See *USF/ICC Transformation Order*, ¶ 508.

cap, AEE will be forced to default on its RUS loans and to shut down voice and broadband service in Adak, stranding consumers and businesses, and jeopardizing critical services and public safety in the region.

**I. BACKGROUND ON AEE AND SERVICE TO THE ADAK AREA.**

Adak Island is an isolated island located approximately 1,200 miles southwest of Anchorage, Alaska, in the Aleutian Islands.<sup>12</sup> It is in the vicinity of an active volcano and in an earthquake zone. The area is characterized by frequent cyclonic storms, winter squalls producing wind gusts in excess of 100 knots, extensive fog storms in the summer, and an average accumulated snowfall of 100 inches.<sup>13</sup> The island is infested with large Norwegian rats and littered with active bombs. Because Adak has a maritime climate with severe storms and high winds during much of the year, it has limited accessibility only by air or by large oceangoing vessels. In the best of circumstances, commercial air service consists of twice-weekly flights. Barges arrive only once a year. Adak is undoubtedly one of the most remote, isolated, and climactically inhospitable communities in the United States.<sup>14</sup>

Based on the most recent United States census data of 2010, Adak has a total population of 326 (the State of Alaska estimates the population at 331). However, given changes in the fishing industry, the population is likely closer to 100 at this time, and may grow as Icicle

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<sup>12</sup> See Density, Geographic Characteristics of Study Area at Exhibit 1.

<sup>13</sup> See *id*; see also Letter from City Manager of Adak, dated March 27, 2012 (“City of Adak Letter”) at Attachment A.

<sup>14</sup> The Adak service area covers approximately 61,000 acres and consists of that portion of Adak Island that was formerly a United States Naval Complex (roughly, the northern one-half of the island). In 2004, The Aleut Corporation, one of 13 Alaska Native Regional Corporations created under the Alaska Native Claims Settlement Act of 1971 in settlement of aboriginal land claims, purchased Adak land and facilities under a land transfer agreement with the Department of the Interior and the U.S. Navy/Department of Defense.

Seafoods builds its workforce once again. Adak Island is home to 37 children (who rely on Schools and Libraries funding), elderly citizens (who depend on Lifeline and Low Income support), and residents and seasonal workers employed by fish processors, a fuel company, the Adak General Store, the City Office, the Post Office, the U.S. Fish and Wildlife Service, the Marine Exchange, the National Oceanic and Atmospheric Administration (“NOAA”), the U.S. Navy, and local small businesses.

In 2003, as noted by The Aleut Corporation in a letter contained in Attachment A, three mid-size and larger telecommunications carriers were asked to provide communications service to Adak after the military shut down its telephone service to the area. All three declined.<sup>15</sup> As explained in the “Story of ATU,” contained in Attachment B, AEE undertook the substantial challenge to become the first private communications service provider on Adak after larger, established telecommunications providers rejected requests by The Aleut Corporation to bring communications services to residents of the island.<sup>16</sup> AEE was required to rebuild the telecommunications system for the Adak area because the telephone plant, which was installed by the military over the course of several decades, was degraded, outdated, and inadequate for long term, reliable provision of regulated local exchange service to customers. AEE began investing and building out the Adak network even before receiving any USF or RUS funding.

Rebuilding the communications network in Adak was time and labor-intensive in large part due to the extreme geographic and weather conditions. AEE had to overcome numerous obstacles during the construction process, including severe storms with high winds, heavy rain

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<sup>15</sup> See Letter from The Aleut Corporation, dated March 28, 2012 (“TAC Letter”) at Attachment A.

<sup>16</sup> See Story of ATU, explaining the build-out of Adak Telephone Utility, as told by the founder, Larry Mayes, at Attachment B.

and snow, extreme terrain, below-freezing temperatures, frozen soil, and rat infestation.

Obtaining materials and equipment from the lower 48 states was particularly difficult as there were no direct barges to Adak and no scheduled flights. Once logistics were arranged, harsh weather conditions frequently impeded their execution.

Construction included such challenging and expensive tasks as obtaining and properly treating local sand and gravel for repair of road crossings, complying with various hazardous materials regulations during shipping of batteries, and coordinating seasonal construction crews. Throughout all of this, power supply and infrastructure presented a significant obstacle. At one point, the residents were cautioned to leave Adak due to the prospects of possible power shut downs. Despite these tremendous challenges, AEE rebuilt and modernized the network, enabling the residents of Adak to continue communicating with the outside world.

Today, AEE provides modern local exchange, broadband access, and Internet services in the Adak area through a digital fiber-optic network.<sup>17</sup> The following is a rough timeline of the recent work undertaken by AEE and the various government approvals that enabled the AEE network:

- 2003: AEE assumed operation of the telephone service. Adak Reuse Corporation (d/b/a as Adak Telephone Utility) transferred its temporary operating authority to AEE.<sup>18</sup>
- 2004: AEE received a temporary Certificate of Public Convenience and Necessity ("CPCN") from the Regulatory Commission of Alaska ("RCA"), allowing AEE to operate while AEE provided a technical report and supplemental financial data that was requested by the RCA.

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<sup>17</sup> AEE invested \$2,651,584 in order to convert all copper lines in the ground to fiber. As discussed with Bureau staff, expensive satellite backhaul creates a bottleneck effect and compromises the quality of these services and the speed of broadband.

<sup>18</sup> See September 19, 2003 *Order Finding Request for Extension of Time Moot, Vacating Filing Requirement, and Granting Request for Transfer of Temporary Operating Authority* at Exhibit 11.



- February 2005: AEE submitted a Petition for Waiver of the Commission's Rules to Obtain Accelerated USF Support and to Participate in NECA Pools and Tariffs.<sup>19</sup> Although the data submission and filing requirements of Part 36 of the Commission's rules postpone the eligibility of newly established LECs to receive USF support until their third year of operation,<sup>20</sup> the Commission granted AEE's Petition for Waiver of these rules in December 2005, finding that any delay in AEE's high-cost support "would impair its ability to provide telecommunications services at affordable rates."<sup>21</sup> The same factors that justified the Commission's waiver in 2005 exist today.
- July 2005: AEE was designated as an Eligible Telecommunications Carrier ("ETC"), permitting AEE to receive state and Federal universal service funds. These funds allowed AEE to reduce local rates and provide telecommunication service to low-income customers in Adak under Lifeline and LinkUp programs.
- October 2005: The Rural Utilities Service approved an RUS loan in the amount of \$6,344,450 in order to fund AEE to rebuild the entire telecommunications system. Today, AEE has drawn down on and deployed \$6,163,773.24 in RUS funding for the Adak network.
- November 2005: After receiving its permanent CPCN from the RCA, AEE commenced rebuilding the Adak landline communications network.
- 2008: AEE launched broadband-capable services through Windy City, LLC and made additional capital investments necessary to add satellite backhaul and ISP services. As a result of AEE's construction and investments, Adak Cablevision, LLC was able to utilize AEE's fiber-to-the-home infrastructure to launch its new IPTV services.
- 2010: AEE's wireless affiliate, Windy City Cellular, LLC ("Windy City Cellular"), was formed and launched the first ever wireless cellular telephone service in Adak.

As discussed more fully in Section III of this Petition, AEE now serves a crucial function in the Adak community in many respects. AEE provides: (1) essential facilities for all communications carriers in Adak, without which voice services, wireless and wireline, and all broadband service will be lost; (2) vital connectivity for Adak's anchor institutions, including the

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<sup>19</sup> See AEE's February 9, 2005 Petition for Waiver of the Commission's Rules to Obtain Accelerated USF Support and to Participate in NECA Pools and Tariffs at Exhibit 11.

<sup>20</sup> See 47 C.F.R. §§ 36.611 and 36.612.

<sup>21</sup> See December 29, 2005 *Order*, ¶ 10 at Exhibit 11.

school, healthcare facility, and utility; (3) essential connections for public safety operations in the region; and (4) critical voice and broadband connections to support Adak's ecosystem and jobs. Moreover, these services are newly initiated, and the related investment expenses were only recently made. The wireline service has been in place six years, the broadband service three years, and the wireless service only two years. In the absence of a waiver, all of these newly-initiated and critical services will be lost, resulting in devastating consequences for the Adak community.

**II. THE COMMISSION COULD NOT HAVE INTENDED THE HARMFUL RESULTS THAT WILL BE CAUSED BY THE STRICT APPLICATION OF THE \$250 MONTHLY CAP.**

As explained in the *USF/ICC Transformation Order*, the Commission's objective in reforming its USF rules is "to ensure that robust affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation."<sup>22</sup> Directly contrary to this objective, the application of the \$250 monthly cap will force AEE out of business in less than two years, leaving the remote Adak community without essential voice and broadband services. This result could not have been intended by the Commission for the following reasons: (1) it will cause Adak to become a new unserved area; (2) the Commission is fully aware of the unique factors that justify support above the \$250 cap for the Adak area; (3) an initial two-year delay in implementing the cap is justified for AEE, just as it is for wireless carriers serving remote Alaskan communities, because without AEE, essential wireless communications on Adak will go dark; (4) as applied to AEE, implementation of the \$250 cap contradicts the National Broadband Plan's guidelines against flash cuts; and (5) implementation of the \$250 cap in a manner that will drive AEE out of business is contrary to multiple Commission policies and objectives.

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<sup>22</sup> *USF/ICC Transformation Order*, ¶ 1.

**A. The \$250 Monthly Cap Will Cause Adak To Become A New Unserved Area.**

As discussed in Section III of the Petition, AEE is committed to providing reliable, comprehensive coverage to the residents, industries and government services – including public safety – of Adak. Absent a waiver, however, the Commission’s implementation of the \$250 monthly cap will make it impossible for AEE to continue providing these newly-initiated and vital services. Under the *USF/ICC Transformation Order*, the phased-in implementation of the \$250 cap will begin on July 1, 2012, only *six months* after it was adopted.<sup>23</sup> As a result of the first phase-down, AEE’s disbursement will decline in July by roughly 34%.<sup>24</sup> On July 1, 2013, AEE’s disbursement will decline by more than 50% compared to current levels.<sup>25</sup> On July 1, 2014, AEE’s support will be fully reduced to \$250 per line, per month, an estimated 83%

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<sup>23</sup> See *id.*, ¶¶ 274-275:

After consideration of the record, we find it appropriate to implement responsible fiscal limits on universal service support by immediately imposing a presumptive per-line cap on universal service support for all carriers, regardless of whether they are incumbents or competitive ETCs. For administrative reasons, we find that the cap shall be implemented based on a \$250 per-line monthly basis rather than a \$3,000 per-line annual basis because USAC disburses support on a monthly basis, not on an annual basis. We find that support drawn from limited public funds in excess of \$250 per-line monthly (not including any new CAF support resulting from ICC reform) should not be provided without further justification . . .

This rule change will be phased in over three years to ease the potential impact of this transition. From July 1, 2012 through June 30, 2013, carriers shall receive no more than \$250 per-line monthly plus two-thirds of the difference between their uncapped per-line amount and \$250. From July 1, 2013 through June 30, 2014, carriers shall receive no more than \$250 per-line monthly plus one-third of the difference between their uncapped per-line amount and \$250. Beginning July 1, 2014, carriers shall receive no more than \$250 per-line monthly (footnote omitted).

<sup>24</sup> See Financial and Operating Forecast at Exhibit 8, which reflects a 17% reduction on an annualized basis, although the reform will be implemented mid-year. The true reduction for the second half of 2012 is 34%.

<sup>25</sup> See *id.*

reduction in AEE's support.<sup>26</sup> The impact of this decline in revenue will be devastating. AEE already has been forced to lay off four of its 17 employees as a result of the immediate cuts imposed on its affiliate, Windy City Cellular, under the *USF/ICC Transformation Order*.<sup>27</sup> By July 2012, when implementation of the \$250 cap begins, AEE will need to begin business-shutdown planning followed by cessation of operations by the end of 2013. AEE already operates at a loss. It obviously cannot sustain even a 34% reduction in USF support beginning in July, much less an 83% reduction to \$250 per line monthly.

AEE, a dedicated company that invested millions of dollars in communications infrastructure, will be put out of business. Indeed, if AEE is forced to shut down, there will be no local wireline voice service, no long distance service provided to interexchange carriers, no Lifeline support for low-income subscribers, no special circuits for telemedicine, no schools or library programs, no connection to broadband service, and no Windy City Cellular – the only wireless service that covers the entirety of the Adak area. It is not an exaggeration to state that if the Bureau does not grant the requested waiver, the Commission will be responsible for creating a new unserved area, wasting substantial, recent, private and public investments to expand service to this remote area, and ultimately destroying the local economy.

As noted above, AEE provides newly initiated services to the Adak community. Having commenced rebuilding the Adak landline communications network after receiving its permanent CPCN in November 2005, AEE's service was initiated only six years ago. Windy City Cellular

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<sup>26</sup> *See id.*

<sup>27</sup> *See generally* Windy City Cellular, LLC, Petition for Waiver, WC Docket No. 10-90, et al., filed April 3, 2012; *see also* Windy City Cellular, LLC, Response to Request for Additional Information and Supplement to Petition for Waiver, WC Docket No. 10-90, et al., filed April 12, 2012 ("WCC Petition"). Two employees were laid off earlier this year, and two additional employees were laid off on May 3, 2012.

initiated its wireless service – the first ever wireless cellular telephone service in Adak – only two years ago in 2010. Broadband service was initiated just three years ago. Given the Commission’s goal to “preserve newly initiated services and facilitate additional investment in still unserved and underserved areas” in remote parts of Alaska,<sup>28</sup> the Commission could not have intended to implement the \$250 cap in a way that will force AEE to shut down, thus depriving the Adak community of the newly initiated voice and broadband services provided by AEE and its affiliates.<sup>29</sup>

AEE understands that Adak may be the only community in the United States affected by the cap in this unexpected way, likely attributable to its unique situation, distinct even from other high cost areas. Unlike other carriers that have the option of instituting cost-cutting measures to offset the reduction in revenue caused by USF reforms, AEE (already operating at a loss) is severely constricted by the unavoidable, fixed high costs inherent in providing service to the Adak area. Instead of “trimming fat” to become more efficient as the *USF/ICC Transformation Order* contemplates, AEE will be forced to cease operations altogether, eliminating voice, broadband, and roaming service to Adak and destroying the fragile economy that is dependent on such service. Such a result could not have been the Commission’s intent, as it violates the

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<sup>28</sup> *USF/ICC Transformation Order*, ¶ 529; see also *Connect America Fund et al.*, WC Docket No. 10-90 et al., Third Order on Reconsideration, ¶ 42 (rel. May 14, 2012) (“*Third Order on Reconsideration*”).

<sup>29</sup> See Comments of Alexicon Telecommunications Consulting, to the *Petition for Waiver* filed by Windy City Cellular, LLC in WC Docket No. 10-90, et al., at 4 (dated May 14, 2012)(emphasizing that “[t]he Commission could not have intended for [Adak] customers to completely lose vital voice services, while at the same time saying all Americans should have access to quality broadband services at reasonable rates.”).

Commission's mandate that consumers in rural, insular, and high cost areas have access to telecommunications and information services comparable to their urban counterparts.<sup>30</sup>

**B. Unique Factors Justify Support Above The \$250 Monthly Cap For The Adak Area.**

AEE's need for high-cost support is justified based on unique factors specifically recognized by the Commission. Adak is not in the 99 percent of incumbent LEC study areas that receive less than the \$250 per line monthly limit. AEE has been receiving, on average, \$1,394 per line monthly to provide wireline access to Adak. This substantially higher cost is based on factors that the Commission recognized as justifying a flexible approach "to take into account the unique conditions in places like Alaska," such as "remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season."<sup>31</sup> All of these factors are applicable to Adak. The area is so remote that residents must ship in groceries from Anchorage, which is 1,200 miles away.<sup>32</sup> There are only 16 miles of paved roads in the area, and to reach parts of its infrastructure AEE must travel primarily on unpaved, steep, slick and treacherous terrain. It is challenging and expensive to ship in fuel and equipment – a barge arrives once a year, and airplane service is twice per week at best. The area is mountainous, covered in snow for the greater part of the year, covered in fog for much of the

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<sup>30</sup> See 47 U.S.C. § 254(b)(3)(C).

<sup>31</sup> See *USF/ICC Transformation Order*, ¶ 508.

<sup>32</sup> As a point of reference, at the Adak General Store: A half gallon of milk costs \$7.99; 16 ounce canned goods are \$4-7 per can; and a gallon of water costs \$15.99.

summer, has gale winds in all months of the year, and is characterized by extreme and sudden changes in weather.<sup>33</sup>

**C. At A Minimum, The Same Two-Year Implementation Delay For Wireless Carriers Serving Remote Alaskan Communities Should Be Afforded To AEE; Without AEE, Wireless Carriers On Adak Will Go Dark.**

The Commission wisely recognized that the unique challenges of serving remote parts of Alaska justify adopting a two-year delay in the phase down of USF support for wireless carriers:

...[C]arriers serving remote parts of Alaska, including Alaska Native villages, should have a slower transition path in order to preserve newly initiated services and facilitate additional investment in still unserved and underserved areas during the national transition to the Mobility Funds. Over 50 remote communities in Alaska have no access to mobile voice service today, and many remote Alaskan communities have access to only 2G services. While carriers serving other parts of Alaska will be subject to the national five-year transition period, we are convinced a more gradual approach is warranted for carriers in remote parts of Alaska. Specifically, in lifting the Covered Locations exception, we delay the beginning of the five-year transition period for a two-year period for remote areas of Alaska . . . During this two-year period, we establish an interim cap for remote areas of Alaska for high-cost support for competitive ETCs, which balances the need to control the growth in support to competitive ETCs in uncapped areas and the need to provide a more gradual transition for the very remote and very high-cost areas in Alaska to reflect the special circumstances carriers and consumers face in those communities.<sup>34</sup>

These very same factors also justify delaying implementation of the \$250 cap for AEE.

However, it should be noted that AEE will not be able to sustain service two years from now if HCLS support is cut at that time. The current support level must be sustained. Although the Commission was not convinced that a blanket delay was needed for all incumbent carriers serving remote Alaska,<sup>35</sup> a minimum two-year implementation delay for AEE is necessary to preserve both wireline and wireless service and serve the public interest. The Alaska

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<sup>33</sup> See Density, Geographic Characteristics of Study Area at Exhibit 1.

<sup>34</sup> *USF/ICC Transformation Order*, ¶ 529.

<sup>35</sup> See *Third Order on Reconsideration*, ¶ 42.

Congressional Delegation agreed that a two-year delay should be expanded to carriers such as AEE: “Given Alaska’s uniqueness in climate, topography, and geography, much of which the FCC has already recognized, the additional time for both CETCs and ILECs will help both wireless and wireline sides adjust better to the FCC’s order.”<sup>36</sup>

Moreover, in adopting the two-year delay for wireless carriers serving remote parts of Alaska, the Commission concluded that the “appropriate means to preserve newly initiated services and to facilitate additional investment would be to provide a ‘slower transition path’ from *current* support levels – to ensure that the aggregate amount of support to remote areas of Alaska was not *reduced* prematurely.”<sup>37</sup> The newly-initiated wireline, wireless and broadband services offered by AEE and its affiliates should be preserved under this Commission policy, and the Bureau should grant AEE’s Petition for Waiver for a minimum of two years in order to preserve AEE’s service and sustain all of Adak’s wireless services.

**D. As Applied To AEE, The \$250 Monthly Cap Contradicts The National Broadband Plan’s Guidelines Against Flash Cuts.**

In view of the extraordinary costs of providing service to Adak, implementation of the \$250 cap for AEE contradicts one of the Commission’s explicit guiding principles from the National Broadband Plan for adopting “Special Access Policies” relating to USF reform that there should not be flash-cut implementation of new rules:

*No flash cuts.* New rules should be phased in over a reasonable time period. Policymakers must give service providers and investors time to adjust to a new regulatory regime.<sup>38</sup>

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<sup>36</sup> Letter from the Alaska Congressional Delegation, dated February 22, 2012, at Attachment A.

<sup>37</sup> *Third Order on Reconsideration*, ¶ 37 (emphasis in original); see also *USF/ICC Transformation Order*, ¶ 529.

<sup>38</sup> National Broadband Plan at 143.